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May 13, 1993

BY HAND

Donna R. Searcy, Secretary
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

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MAY 13 1993

FEDERAL COMMUNICATIONS COMMISSION

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In re Applications of)	MM Docket No. 93-94
)	
Scripps Howard Broadcasting Company)	FCC File No. BRCT-910603KX
)	
For Renewal of License of)	
Station WMAR-TV,)	
Baltimore, Maryland)	
)	
and)	
)	
Four Jacks Broadcasting, Inc.)	FCC File No. BPCT-910903KE
)	
For a Construction Permit)	
For a New Television)	
Facility on Channel 2 in)	
Baltimore, Maryland)	

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TO: The Honorable Richard L. Sippel
Presiding Administrative Law Judge

MAY 13 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**THRESHOLD SHOWING OF SCRIPPS HOWARD BROADCASTING
COMPANY'S UNUSUALLY GOOD PAST PROGRAMING RECORD**

Scripps Howard Broadcasting Company ("Scripps Howard") hereby presents a threshold showing of the unusually good programming record demonstrated by the television stations it owns that are most similar in size and operation to Station WMAR-TV (i.e., WMAR-TV itself and Scripps Howard's other six VHF network-affiliated stations). On the basis of this showing, which includes a description of the role Scripps Howard-group management plays in encouraging locally produced non-entertainment programming on its stations, Scripps Howard respectfully requests the Presiding Judge to permit the introduction of evidence to establish that Scripps Howard is entitled to special comparative credit under the "past broadcast

record" issue. See Minneapolis Star and Tribune Co., 88 F.C.C.2d 1604, 1612-14 (Rev. Bd. 1982).

In support of its request, Scripps Howard offers the following:

1. Past broadcast record programming credit may be successfully obtained by a non-integrated group owner.

Case precedent demonstrates that the past broadcast record issue is not tied exclusively to integration of ownership and management. Knoxville Broadcasting Corp., 103 F.C.C.2d 669, 684-685 (Rev. Bd. 1986) (holding that integration and past broadcast record are "wholly discrete"); see, also, Farragut Television Corp., 8 F.C.C.2d 279, 283-284 (1967). Accordingly, the issue logically may be sought by a non-integrated group owner for an unusually good programming record so long as there is an appropriate showing that the group's policies played a role in the stations' superior programming performance and that such policies apply equally to Station WMAR-TV. That group owners should enjoy the opportunity to make such a showing is supported by the fact that the Commission has expressly recognized a positive correlation between a higher level of issues-related programming and multiple station ownership. See Multiple Ownership of AM, FM, and Television Broadcast Stations, 100 F.C.C.2d 17, 31-37 (1984).

2. Scripps Howard's group policies contribute to the offering of unusually good programing without adversely affecting station viewpoint independence.

Scripps Howard's practice is to make each of its television station general managers an officer of the company, and it expects these officers' ascertainment efforts in the local community to independently guide their specific programming decisions. Scripps Howard's group-wide management in Cincinnati, however, is committed to both encouraging and assisting these managers in the offering of locally produced non-entertainment community-oriented programming. The company views this group management oversight as being one of the best means of ensuring that Scripps Howard's long-term commitments to its stations and their communities will be protected and rewarded.

This oversight is accomplished through:

- a. the assignment of Scripps Howard Vice President Ken Lowe to assist the individual Scripps Howard stations in offering unusually good local non-entertainment issues-responsive programming. For example, Mr. Lowe oversees Scripps Howard's production of an original programming series for children. His office also acts as a central clearinghouse for the sharing of issues-responsive programming ideas--and, when appropriate, of high quality Scripps Howard station-produced issues-responsive program segments--throughout the company (see Exhibit 1.);

- b. the assignment of a Scripps Howard Vice President for News--currently Mr. Robert Rowe--specifically to assist the individual stations in offering local newscasts that meet the highest standards in journalism (see Exhibit 2); and
- c. the implementation of group-wide policies that ensure all Scripps Howard stations are aware of and follow group management policies designed to promote the offering of unusually good issues-responsive programming (see Exhibit 3). These policies include that:
 - (1) despite FCC deregulation, formal community ascertainment efforts shall be maintained at each station in addition to any other ascertainment efforts deemed appropriate by the station manager (see Exhibit 4);
 - (2) local news operations shall follow a specific course of journalistic ethics (see Exhibit 5); and
 - (3) each station's issues/programs lists shall be presented for group-wide management review on a quarterly basis to serve as an extra check on the adequacy of each station's commitment to

community issues programming (see
Exhibit 6).

3. These efforts have contributed to the delivery of community needs-related local programming by Scripps Howard's stations that is unusually good.

The attached programming exhibits offer a threshold showing of the superior level of Scripps Howard's performance which has resulted from its management policies. They include:

- a. tables and program grids showing that in the amounts of regularly scheduled, locally produced, non-entertainment programming, Scripps Howard's network-affiliated stations generally have performed at a market-leading level (see Programming Exhibit A).
- b. a sample of recent programming awards won by these stations which demonstrates the high quality of the stations' programming efforts (see Programming Exhibit B).

Finally, while ratings standing alone are an unreliable guide to a station's news quality, Scripps Howard's network affiliated stations have a history of solid news ratings performance. During the May 1990 period identified in Programming Exhibit A, for example, the applicable Nielsen and Arbitron reports show three Scripps Howard network-affiliated stations led their markets in early evening news and three led in late evening news, while only one station placed third in each time period. For July of 1991, three stations led in the early

news and three led in the late news, while one and two stations respectively trailed the other network affiliates in their markets. Finally, for the most recent sweeps, February 1993, six of the seven Scripps Howard network affiliates led their markets in early evening news and three led in late news, while one and two respectively finished third.

4. Scripps Howard demonstrated long term commitment to

interest by encouraging the delivery of better programming service.²

Conclusion

Localism is the foundation of America's broadcast system. Congress, for example, has recently reiterated the well established principle that "[a] primary objective and benefit of our Nation's system of regulation of television broadcasting is the local origination of programming." See Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 89-670, § 2, 106 Stat. 1460 (1992).

This threshold showing demonstrates that Scripps Howard has a superior record of dedication to the delivery of unusually good locally produced television program service. Further, because this record is tied to the group policies and practices described herein and because these policies and practices apply equally to Station WMAR-TV, this record is relevant to the likelihood that Station WMAR-TV likewise may be predicted to offer superior performance. Accordingly, for the reasons identified herein, it

² Interestingly, the record shows a starkly contrasting pattern for the principals of Four Jacks Broadcasting, Inc. For example, rather than investing in and building up their unsuccessful UHF station in Pittsburgh, the Four Jacks principals sold it and bought a successful station in the same market. See FCC letter to Martin R. Leader, June 21, 1991 (citing Four Jacks' principals' own claim that their station "has consistently been last among Pittsburgh's over-the-air stations and even lags behind three different cable channels in terms of market share") (copy attached as Exhibit 8). Likewise in Baltimore itself, rather than choosing to seek to build on their record at Station WBFF by attempting to change the frequency of that station to Channel 2, they chose to abandon that broadcast service in favor of a wholly new operation.

is requested that Scripps Howard be permitted to introduce evidence under the "past broadcast record" issue that it has offered unusually good program service over its television stations which are most similar in size and operation to Station WMAR-TV.

Respectfully submitted,

SCRIPPS HOWARD BROADCASTING COMPANY

By: 

Kenneth C. Howard, Jr.
Leonard C. Greenebaum
David N. Roberts

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1050 Connecticut Avenue, N.W.
Suite 1100
Washington, DC 20036
(202) 861-1500

May 13, 1993

Counsel to Scripps Howard
Broadcasting Company

EXHIBIT 1

AFFIDAVIT OF KENNETH W. LOWE

I, Kenneth W. Lowe, based on my personal knowledge, do hereby affirm and state as follows:

1. One of my principal responsibilities at Scripps Howard Broadcasting Company is the encouragement and coordination of local community-related program production at the Scripps Howard stations. A recent example of our group's efforts to meet viewers' needs through appropriate programming is the quarterly children's series "Fast Forward." The production of this one-half hour program is a collaborative effort among the Scripps Howard stations. The program offers original issues-related programming for children 16 and under, and each station contributes locally produced segments for the program it airs. Scripps Howard stations first aired "Fast Forward" in March of 1992, and a completely new show is produced and aired each quarter.

2. The quarterly airing of a locally tailored version of Fast Forward (or another locally produced issues-responsive children's show) is mandatory at Scripps Howard stations. For non-children's local programming, no such quantitative requirements exist, and my role is much more one of a facilitator and information provider for the local station general managers. For example, my office routinely collects information on local programming efforts and notifies all the general managers of their counterparts' ongoing programming production activities. In this way, my office serves as a clearinghouse and as a source of program segments and program ideas.

I declare under penalty of perjury that the foregoing
is true and correct.

Date: 5-12-93


By: 
Kenneth W. Lowe
Vice President
Scripps Howard Broadcasting
Company

EXHIBIT 2

AFFIDAVIT OF BOB ROWE

I, Bob Rowe, based on my personal knowledge, do hereby affirm and state as follows:

1. I am Vice-President of News for Scripps Howard Broadcasting Company ("Scripps Howard").

2. I have reviewed the information with respect to Scripps Howard's group-wide news programming policies offered in the Threshold Showing of Scripps Howard Broadcasting Company's Unusually Good Past Programming. The information contained therein








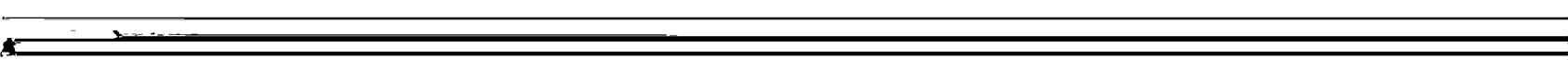


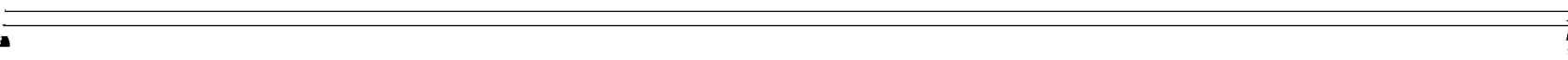
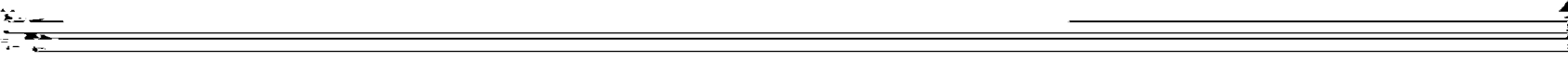






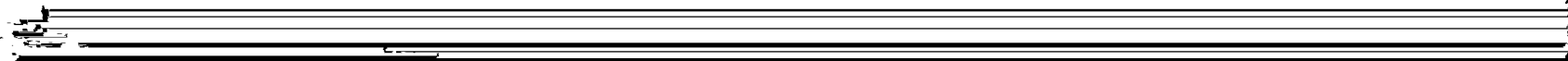


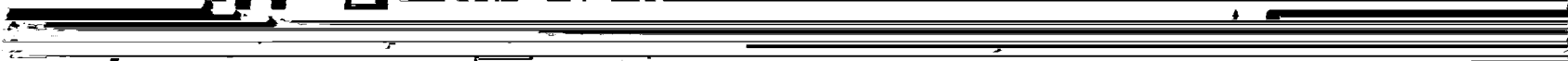


EXHIBIT 3

AFFIDAVIT OF TERRY H. SCHROEDER

I, Terry H. Schroeder, based on my personal knowledge,
do hereby affirm and state as follows:

1. I am Vice-President of Scripps Howard Broadcasting
Company ("Scripps Howard").

2. I have reviewed the information with respect to
Scripps Howard's history of station ownership and Scripps Howard's
group-wide policies offered in the Threshold Showing of Scripps
Howard Broadcasting Company's Unusually Good Past Programming. The
information contained therein with respect to these matters is true
and correct to the best of my knowledge.

I declare under penalty of perjury that the foregoing is
true and correct.

Date: 5/12/93

By: Terry H. Schroeder
Terry H. Schroeder
Vice-President
Scripps Howard
Broadcasting Company

EXHIBIT 4



SCRIPPS HOWARD
BROADCASTING

File

INTER-OFFICE MEMO

TO: TCG FG EH RGK WJD PDB FROM Terry H. Schroeder
WJB BJW JFM JHK DWM JPF

DATE:

November 3, 1989

SUBJECT

Ascertainments

As you should be aware the FCC has relaxed its requirements in the area for community leader ascertainments but Scripps Howard Broadcasting has elected to continue with the ascertainment process as if no changes had taken place.

We had requested that on a quarterly basis each station send to Dick Janssen a short memorandum verifying that the ascertainments had taken place during the quarter and providing a statistical profile of how many and what type of community leaders were ascertained. The detail of the interviews need not be sent to Cincinnati on a quarterly basis.

For the quarter ending September 30, 1989 only two stations, WXYZ-TV and WPTV, have submitted statements verifying the ascertainment process was active. Please review your records and if ascertainments took place during the 3rd quarter please make us aware of them. If ascertainments are not continuing at your station you should implement them immediately.

Please call me if you have any questions.

TERRY

cc: RJJ
KWL

EXHIBIT 5

P.O. BOX 5380
CINCINNATI, OHIO 45201
513 977-3771

ROBERT A. ROWE
VICE PRESIDENT/NEWS



SCRIPPS HOWARD
BROADCASTING

MEMO TO:

BILL BROOKS, J.B. CHASE, BILL DONAHUE
JIM FOX. TOM GRIESDORN. ED HARDY.

SCRIPPS HOWARD BROADCASTING

NEWS CODE OF CONDUCT

As every news person is well aware, integrity and credibility are the major ingredients contributing to the success of any news organization. Without them, our news becomes suspect and less believable.

Maintaining that integrity and credibility depends as much on our personal conduct, as on the content of our newscasts.

While the following guidelines are intended to help us avoid even the appearance of misconduct or improper activity, obviously no code of conduct can set forth rules to cover every situation. Common sense and good judgment will normally be the key.

Membership in professional journalistic organizations and voluntary work for religious, civic, cultural or social groups are acceptable. However, you should personally avoid such activities as public fund-raising or being a public spokesperson, unless specifically approved by the general manager for such events as station related charity drives or telethons.

B. We should refuse any special treatment or gifts of more than token value (not more than \$25), given in the course of professional activities. These include free or cut-rate services of any kind such as discounts on clothes, free meals, free sports equipment, free or cut-rate trips, free "loan" cars, free or cut-rate club memberships.

The general rule should be: If the gift is offered, even partly because you work for a television or radio station, it should not be accepted.

C. Materials such as books, records, CD's, audio and video tapes received for review purposes become the property of the station. They may not be sold. The general manager will decide what is to be done with the materials.

D. Journalists, both those on and off the air, should refuse to publicly endorse any product, service or cause. It is not our place to help any company sell (or increase demand for) its product. Exceptions may be made at the discretion of the general manager in cases such as station charity drives or telethons.

E. In general, Scripps Howard stations pay their own way. News people accept no free transportation or the payment of travel expenses. If the event is newsworthy, the news department should pay its own way. Any exceptions must be approved by the general manager.

Certain rare exceptions may arise, such as military or private transportation, for which no practical alternative is available. In such cases, the decision to accept will rest solely with the general manager and news director.

OUTSIDE EMPLOYMENT

We work for Scripps Howard Broadcasting and no one else, without written permission from the general manager.

Free-lance work is permitted if:

1. Approval is granted in advance by the general manager.
2. And you will not be competing with a Scripps Howard station.
3. And the work in no way conflicts with your regular job and in no way reflects adversely on Scripps Howard Broadcasting, its product, its employees, reputation or good will.

4. And you will not be using news or feature material you or other Scripps Howard employees gathered while working for a Scripps Howard station.

B. No news employee, on or off the air, should have personal involvement in politics or political activity beyond registering and voting. Clearly, it is improper for a newsperson to run for political office, to serve a political candidate either voluntarily or for pay, or to publicly endorse candidates or partisan political causes, while actively employed by the station. An employee wishing to run for office, or work for a candidate, will be required to resign or take an unpaid leave of absence with no guarantee of further employment with the station, at the discretion of the general manager. Any plans should be discussed in advance with your general manager and news director.

FINANCIAL CONFLICTS

As a journalist, you may have access to Scripps Howard or other companies' financial information before it becomes public knowledge. It is unethical to use this information for your personal financial gain or the financial gain of anyone else.

You should avoid any action, no matter how well intentioned, that could create suspicion you profited financially by using "inside" information, or that you are beholden to anyone in the financial community.

If you feel you have violated these guidelines in any way, immediately notify your news director or general manager.